



02 JUN 2003

# 12

UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENTS  
UNITED STATES PATENT AND TRADEMARK OFFICE  
P.O. Box 1450  
ALEXANDRIA, VA 22313-1450  
www.uspto.gov

Karla M. Weyand  
Braman & Rogalskyj, LLP  
P.O. Box 352  
Canandaigua, NY 14424

In re Application of THORNER et al :  
U.S. Application No.: 09/868,118 :  
Int. Application No.: PCT/GB99/04228 :  
Int. Filing Date: 14 December 1999 :  
Priority Date: 14 December 1998 :  
Attorney Docket No.: 002.00150 (MEDY/P22233US) :  
For: SCREENING METHODS BASED ON THE :  
USE OF PROTEIN KINASES :

DECISION

This is in response to applicant's "Petition Under 37 CFR § 1.181" filed 19 May 2003..

### **BACKGROUND**

On 14 December 1999, applicant filed international application PCT/GB99/04228, which claimed priority of an earlier United States application filed 14 December 1998. A copy of the international application was communicated to the USPTO from the International Bureau on 22 June 2000. A Demand for international preliminary examination, in which the United States was elected, was filed on 10 July 2000, prior to the expiration of nineteen months from the priority date. Accordingly, the thirty-month period for paying the basic national fee in the United States expired at midnight on 14 June 2001.

On 14 June 2001, applicant filed national stage papers in the United States Designated/Elected Office (DO/EO/US). The submission was accompanied by, *inter alia*, the basic national fee required by 35 U.S.C. 371(c)(1).

On 26 July 2001, the DO/EO/US mailed a Notification of Missing Requirements Under 35 U.S.C. 371 (Form PCT/DO/EO/905), which indicated that an oath or declaration in compliance with 37 CFR 1.497 and certain sequence listing requirements under 37 CFR 1.821-1.825 must be filed.

On 26 September 2001, applicant filed a response to the Notification of Missing Requirements, including executed declarations, a sequence listing in paper form, and a sequence listing in computer readable form (CRF).

On 18 December 2001, the DO/EO/US mailed a Notification of Defective Response, which indicated that the CRF filed 26 September 2001 was defective and that the paper copy of the sequence listing is not the same as the CRF.

On 22 November 2002, the DO/EO/US mailed a Notice of Abandonment.

On 06 December 2002, applicant filed a petition under 37 CFR 1.181.

On 19 March 2003, this Office mailed a decision dismissing the 06 December 2002 petition.

On 19 May 2003, applicant filed the present petition under 37 CFR 1.181.

### **DISCUSSION**

The present petition states that the Notification of Defective Response was never received.

According to the Official Gazette at 1156 OG 53 and MPEP 711.03(c), a petition to withdraw a holding of abandonment based on failure to receive an Office communication must include: (1) a statement by the practitioner that the Office communication was not received by the practitioner, (2) a statement by the practitioner that he searched the application file jacket and docket records and that the search indicates that the Office communication was not received, and (3) a copy of the docket record where the non-received Office communication would have been entered had it been received and docketed.

With regard to item (1) above, applicant's representative has provided the required statement.

With regard to item (2) above, applicant's representative has provided the required statement.

With regard to item (3) above, applicant has supplied a docket record which lists responses due to the USPTO on 18 January 2002 for all cases handled by the representative's firm. This docket record illustrates the absence of any listing of a response due to a Notification of Defective Response.

### **CONCLUSION**

For the reasons above, the petition under 37 CFR 1.181 is GRANTED.

The Notice of Abandonment mailed 22 November 2002 is hereby VACATED.

Applicant is required to reply to the Notification of Defective Response within ONE MONTH from the mailing date of this decision. Extensions of time are NOT available under 37 CFR 1.136(a). Failure to file a timely response will result in ABANDONMENT of the application.

Please direct further correspondence with respect to this matter to Mail Stop PCT, Commissioner for Patents, Office of PCT Legal Administration, P.O. Box 1450, Alexandria, Virginia 22313-1450, with the contents of the letter marked to the attention of the Office of PCT Legal Administration.



Bryan Tung  
PCT Legal Examiner  
PCT Legal Office

Telephone: 703-308-6614

Facsimile: 703-308-6459